

REFERENCE TITLE: **workers' compensation; truckers; officer escorts**

State of Arizona
House of Representatives
Forty-ninth Legislature
First Regular Session
2009

HB 2056

Introduced by
Representatives Reagan: Hendrix, Konopnicki

AN ACT

**AMENDING SECTIONS 23-961 AND 41-805, ARIZONA REVISED STATUTES; RELATING TO
WORKERS' COMPENSATION.**

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 23-961, Arizona Revised Statutes, is amended to
3 read:

4 23-961. Methods of securing compensation by employers: deficit
5 premium: civil penalty

6 A. Employers shall secure workers' compensation to their employees in
7 one of the following ways:

8 1. By insuring and keeping insured the payment of such compensation
9 with the state compensation fund or an insurance carrier authorized by the
10 director of insurance to write workers' compensation insurance in this state.

11 2. By furnishing to the commission satisfactory proof of financial
12 ability to pay the compensation directly or through a workers' compensation
13 pool approved by the commission in the amount and manner and when due as
14 provided in this chapter. The requirements of this paragraph may be
15 satisfied by furnishing to the commission satisfactory proof that the
16 employer is a member of a workers' compensation pool approved by the
17 commission pursuant to section 23-961.01. The commission may require a
18 deposit or any other security from the employer for the payment of
19 compensation liabilities in an amount fixed by the commission, but not less
20 than one hundred thousand dollars for workers' compensation liabilities. If
21 the employer does not fully comply with the provisions of this chapter
22 relating to the payment of compensation, the commission may revoke the
23 authority of the employer to pay compensation directly.

24 3. BY FURNISHING TO THE COMMISSION SATISFACTORY PROOF THAT THE
25 EMPLOYER IS AN INTERSTATE MOTOR CARRIER DOMICILED OUTSIDE THIS STATE, THAT
26 THE EMPLOYER HAS WORKERS' COMPENSATION AS REQUIRED BY THE EMPLOYER'S STATE OF
27 DOMICILE AND THAT THE EMPLOYER'S WORKER'S COMPENSATION INSURANCE CARRIER IS
28 RESPONSIBLE FOR WORKERS' COMPENSATION LIABILITIES THAT ARISE IN THIS STATE.

29 B. An employer may not secure compensation to comply with this chapter
30 by any mechanism other than as provided in this section. No insurance,
31 combination or other program may be marketed, offered or sold as workers'
32 compensation that does not comply with this section. An employer violates
33 this chapter if the employer purchases or secures its obligations under this
34 chapter through a substitute for workers' compensation that does not comply
35 with this section.

36 C. Insurance carriers that transact the business of workers'
37 compensation insurance in this state shall be subject to the rules of the
38 director of insurance.

39 D. The director of insurance shall not issue to an insurance carrier a
40 certificate of authority that authorizes the insurance carrier to transact
41 workers' compensation insurance until the insurer deposits with the state
42 treasurer, through the director of insurance, cash or securities. The state
43 compensation fund shall also deposit cash or securities with the state
44 treasurer, through the director of insurance, before transacting the business
45 of workers' compensation insurance. The amount of cash or securities

required under this subsection shall be at least equal to the greater of the following amounts:

1. One hundred thousand dollars.

2. The sum of subdivisions (a) and (b) of this paragraph less credits for approved reinsurance computed as of the preceding December 31 or other time as requested by the department of insurance for workers' compensation insurance written subject to the laws of this state:

(a) The aggregate of the present values at six per cent interest of all determined and estimated future direct reported loss and loss expense payments on compensation claims incurred more than three years immediately before the preceding December 31 or other time as requested by the department of insurance.

(b) The aggregate of the amounts determined for each of the three years immediately before the preceding December 31 or other time as requested by the department of insurance ~~which~~ THAT equals the greater of the following:

(i) Sixty-five per cent of the earned premiums for the year less all direct reported loss and loss expense payments made on compensation claims incurred in the corresponding year.

(ii) The present value at six per cent interest of all determined and estimated future direct reported loss and loss expense payments on compensation claims incurred in that year.

E. On or before April 15 and on any date that the department of insurance specifically requests, an insurance carrier shall file with the department of insurance the information necessary to compute the required amount to be deposited pursuant to subsection D of this section and shall deposit any required additional amount.

F. An insurance carrier shall maintain at all times a deposit of cash or securities with the state treasurer, through the director of insurance, in an amount that is not less than the amount required under this section.

G. Cash or securities deposited pursuant to this section are subject to approval by the director of insurance at all times. The director of insurance shall hold the cash or securities for fulfillment of the obligations of the insurance carrier, including an insurance carrier acting as a reinsurer, under this chapter. The commission shall have a lien against the cash or securities deposited to the extent the special fund is liable to pay the obligations secured by the cash or securities.

H. Except in the event of nonpayment of premiums, each insurance carrier shall carry a risk to the conclusion of the policy period unless the policy is cancelled by the employer or unless one or both of the parties to a professional employer agreement terminate the agreement. The policy period shall be agreed ~~upon~~ ON by the insurance carrier and the employer.

I. At least thirty days' notice shall be given by the insurance carrier to the employer and to the commission of any cancellation or nonrenewal of a policy if the cancellation or nonrenewal is at the election

1 of the insurance carrier. The insurance carrier shall promptly notify the
2 commission of any cancellation by the employer or failure of the employer to
3 renew the policy. The failure to give notice of nonrenewal if the nonrenewal
4 is at the election of the insurance carrier shall not extend coverage beyond
5 the policy period. An insurance carrier shall notify the commission on a
6 form prescribed by the commission that it has insured an employer for
7 workers' compensation promptly after undertaking to insure the employer.

8 J. Every insurance carrier, including the state compensation fund, on
9 or before March 1 of each year shall pay to the state treasurer for the
10 credit of the administrative fund, in lieu of all other taxes on workers'
11 compensation insurance, a tax of not more than three per cent on all premiums
12 collected or contracted for during the year ending December 31 next
13 preceding, less the deductions from such total direct premiums for applicable
14 cancellations, returned premiums and all policy dividends or refunds paid or
15 credited to policyholders within this state and not reapplied as premiums for
16 new, additional or extended insurance. Every self-insured employer,
17 including workers' compensation pools, on or before March 31 of each year
18 shall pay a tax of not more than three per cent of the premiums ~~which~~ THAT
19 would have been paid by the employer if the employer had been fully insured
20 under a plan available from the state compensation fund during the preceding
21 calendar year. The commission shall adopt rules that shall specify those
22 methods to be used for the calculation of rates and premiums and that shall
23 be the basis for the taxes assessed to self-insured employers. The tax shall
24 be not less than two hundred fifty dollars per annum and shall be computed
25 and collected by the commission and paid to the state treasurer for the
26 credit of the administrative fund at a rate not exceeding three per cent to
27 be fixed annually by the industrial commission. The rate shall be no more
28 than is necessary to cover the actual expenses of the industrial commission
29 in carrying out its powers and duties under this title. Any quarterly
30 payments of tax pursuant to subsection L of this section shall be deducted
31 from the tax payable pursuant to this subsection.

32 K. An insurance carrier may reduce the amount of premiums paid by an
33 employer by up to five per cent if all of the following apply:

34 1. The insured employer complies with the drug testing policy
35 requirements prescribed in section 23-493.04.

36 2. The insured employer conducts drug testing of prospective
37 employees.

38 3. The insured employer conducts drug testing of an employee after the
39 employee has been injured.

40 4. The insured employer allows the employer's insurance carrier to
41 have access to the drug testing results under paragraphs 2 and 3 of this
42 subsection.

43 L. Any insurer ~~which~~ THAT, pursuant to this section, paid or is
44 required to pay a tax of two thousand dollars or more for the preceding
45 calendar year shall file a quarterly report, in a form prescribed by the

commission, accompanied by a payment in an amount equal to the tax due at the rates prescribed in subsection J of this section for premiums determined pursuant to subsection J of this section or an amount equal to twenty-five per cent of the tax paid or required to be paid pursuant to subsection J of this section for the preceding calendar year. The quarterly payments shall be due and payable on or before the last day of the month following the close of the quarter and shall be made to the state treasurer.

M. If an overpayment of taxes results from the method prescribed in subsection L of this section, the industrial commission may refund the overpayment without interest.

N. An insurer who fails to pay the tax prescribed by subsection J or L of this section or the amount prescribed by section 23-1065, subsection A is subject to a civil penalty equal to the greater of twenty-five dollars or five per cent of the tax or amount due plus interest at the rate of one per cent per month from the date the tax or amount was due.

O. Neither the state compensation fund nor an insurance carrier authorized to write workers' compensation insurance may assess an employer premiums for services provided by a contractor alleged to be an employee under section 23-902, subsection B or C, unless the fund or carrier has done both of the following:

1. Prepared written audit or field investigation findings establishing that all applicable factors for determining employment status under section 23-902 have been met.

2. Provided a copy of such findings to the employer in advance of assessing a premium.

P. Notwithstanding section 23-901, paragraph 6, subdivision (i), a sole proprietor may waive the sole proprietor's rights to workers' compensation coverage and benefits if both the sole proprietor and the insurance carrier of the employer subject to this chapter for which the sole proprietor performs services sign and date a waiver ~~which~~ THAT is substantially in the following form:

I am a sole proprietor, and I am doing business as
 (name of sole proprietor). I am performing work as an
 independent contractor for (name of employer). I am not the
 employee of (name of employer) for workers' compensation
 purposes, and, therefore, I am not entitled to workers'
 compensation benefits from (name of employer). I understand
 that if I have any employees working for me, I must maintain
 workers' compensation insurance on them.

 Sole proprietor

 Date

 Insurance carrier

 Date

1 Sec. 2. Section 41-805, Arizona Revised Statutes, is amended to read:

2 41-805. Off duty peace officers: lease or rental of law
 3 enforcement equipment

4 A. Subject to the agreement of the director of the department of
 5 administration, the head of a state department or agency that employs peace
 6 officers who are certified by the Arizona peace officer standards and
 7 training board established by section 41-1821 may allow those peace officers
 8 to engage in off duty law enforcement work if that work does not conflict
 9 with the work performed by the certified peace officers for the state
 10 department or agency.

11 B. If the head of a state department or agency allows its certified
 12 peace officers to engage in off duty law enforcement work pursuant to
 13 subsection A of this section, the state department or agency may lease or
 14 rent motor vehicles and other law enforcement equipment directly to its
 15 certified peace officers for the purpose of traffic safety, traffic control
 16 or other law enforcement related activity.

17 C. If a state agency or department leases or rents motor vehicles
 18 pursuant to subsection B of this section, the state agency or department
 19 shall:

20 1. Adopt rules and policies relating to the lease or rental of motor
 21 vehicles and other law enforcement equipment that are substantially similar
 22 to the rules and policies adopted by the department of public safety.

23 2. Deposit, pursuant to sections 35-146 and 35-147, any monies
 24 generated from the leasing or renting of the state fleet motor vehicles in
 25 the motor vehicle pool revolving fund established by section 41-804.

26 D. The department of administration shall adopt uniform contract
 27 indemnity provisions and insurance coverage provisions naming this state and
 28 the agency that allows its certified peace officers to engage in off duty law
 29 enforcement work as additional insureds on a commercial liability policy.
 30 The coverage policy applies to all employers of certified peace officers
 31 engaging in off duty law enforcement work pursuant to this section. The
 32 coverage policy shall hold this state harmless and indemnify this state by
 33 employers of certified peace officers engaging in off duty law enforcement
 34 work.

35 E. THE INSURANCE COVERAGE DESCRIBED IN SUBSECTION D OF THIS SECTION
 36 SHALL NOT INCLUDE WORKERS' COMPENSATION COVERAGE UNDER TITLE 23 IF THE
 37 PURPOSE OF THE OFF DUTY LAW ENFORCEMENT WORK THAT IS TO BE PERFORMED BY THE
 38 CERTIFIED PEACE OFFICER IS TO SATISFY REQUIREMENTS PRESCRIBED BY TITLE 28,
 39 CHAPTER 3, ARTICLE 18.